

After reviewing the record and considering the arguments, the Appeals Board finds and concludes the decision by the ALJ should be affirmed.

The issues raised by respondent on this appeal are subject to review in an appeal from a preliminary order. K.S.A. 1996 Supp. 44-534a.

(1) The evidence establishes that claimant did not give notice within 10 days but also establishes just cause for that failure. The claim is, therefore, not barred by failure to comply with the 10-day notice requirements. K.S.A. 44-520.

Claimant worked as a secretary for respondent's law firm beginning in April 1994 and continuing until she left on October 23, 1996 because of a disagreement with one of the lawyers in the firm. Claimant began experiencing pain in her right wrist in the spring of 1996. Claimant has a history of arthritis and initially believed the symptoms were from that arthritis. She began experiencing tingling and numbness in August 1996. Claimant testified that the tingling and numbness were not symptoms associated with the type of arthritis she had. She thought that perhaps she had some other type of arthritis which might produce those symptoms. Claimant mentioned these symptoms to Kenneth A. Norton, M.D., a physician she was seeing for other reasons. Dr. Norton recommended that they treat those other conditions before addressing the hand and wrist symptoms. Claimant was eventually referred for an EMG in December 1996. The EMG demonstrated severe right wrist neuropathy. Claimant first gave notice of work-related injury on December 13, 1996.

The Appeals Board finds just cause for failure to give notice. The claimant had a good faith belief that her initial pain symptoms resulted from arthritis. When claimant began experiencing the numbness and tingling in August 1996, she believed that this might result from some other type of arthritis. While claimant clearly also knew that her work made the symptoms worse, the Appeals Board believes that it was reasonable for her not to give notice of any work-related injury until such time that she became aware that the condition was not arthritis but was carpal tunnel syndrome, a condition more likely to be caused by repetitive work activities.

Respondent also argues that the last day worked should not be treated as the date of accident and that the notice was more than 75 days from the date of accident. Claimant did not leave employment because of the injury, and the Appeals Board agrees that the date of accident is therefore not controlled by the rationale of Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994). In that case, the Court of Appeals held that the last day of work should always be treated as the date of accident for a work-related carpal tunnel syndrome when the claimant leaves employment because of that injury. In this case, the claimant left work because of a dispute with an attorney in the law firm. The Appeals Board, nevertheless, believes that the last date worked should be treated as the date of accident in this case. Claimant testified that after giving notice she was given substantially more typing work for the last two weeks of her employment and the symptoms noticeably worsened. If the condition is work related, the Appeals Board believes the last day of work should, in this case, be treated as the date of accident.

(2) The Appeals Board concludes that claimant's condition was, more probably than not, aggravated by the work and is, therefore, compensable.

Claimant testifies that she experienced symptoms later diagnosed to be carpal tunnel syndrome and that those symptoms were made worse by the repetitive typing activities she performed in the course of employment for respondent. The only expert medical opinion in evidence, however, is the opinion of Robert T. Tenny, M.D., that "it would be difficult to relate" her condition to her work. Even though it is the only expert medical opinion, the Board finds Dr. Tenny's opinion unpersuasive. He relies on records of Dr. Norton which, according to Dr. Tenny, do not reflect symptoms of carpal tunnel syndrome until November 1996, after claimant left employment. Setting aside questions about whether this first recorded date of symptoms should be decisive, the evidence suggests the symptoms appeared substantially earlier than Dr. Tenny assumes. Even Dr. Tenny's records show claimant gave history of onset of numbness in August 1996. Claimant also testified the numbness began in August 1996. The records of Dr. Tenny's, December 17, 1996, exam reflect he believed the work significant as he states:

"Her social history is significant in that she has been employed by the Levy & Craig Law firm as a legal secretary. She indicates that the job would require at least 7 hours a day of 'heavy typing' mostly on a computer keyboard."

The Appeals Board concludes that claimant's testimony about the onset of symptoms, the type of work claimant performed, and the relationship between the symptoms and work make the work the most probable cause of claimant's carpal tunnel syndrome.

**WHEREFORE**, the Appeals Board finds that the Preliminary Decision by Administrative Law Judge Robert H. Foerschler, dated April 15, 1997, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1997.

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BOARD MEMBER

c: Richard W. Morefield, Jr., Kansas City, MO  
Mark E. Kolich, Kansas City, KS  
Robert H. Foerschler, Administrative Law Judge  
Philip S. Harness, Director